

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT KEITH ERNST,

Plaintiff,

v.

CARL FABIAN, et al.,

Defendants.

No. 2:24-cv-2949 CSK P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, this Court recommends that this action be dismissed.

Plaintiff filed his complaint on October 25, 2024. (ECF No. 1.) Plaintiff did not pay the filing fee or file an application to proceed in forma pauperis. Accordingly, on November 5, 2024, this Court granted plaintiff thirty days to pay the filing fee or file an application to proceed in forma pauperis. (ECF No. 3.) Thirty days passed and plaintiff did not pay the filing fee or file an application to proceed in forma pauperis. However, plaintiff filed an amended complaint on November 15, 2024 and a motion for a temporary restraining order on December 13, 2024. (ECF Nos. 4, 5.) Because it appeared that plaintiff intended to prosecute this action, on December 17, 2024 this Court granted plaintiff thirty days to pay the filing fee or file an application to proceed in forma pauperis. (ECF No. 6.) In the order filed December 17, 2024, this Court advised

1 plaintiff that the Court would address plaintiff's motion for a temporary restraining order after  
2 plaintiff paid the filing fee or filed an application to proceed in forma pauperis. (Id.) In the  
3 December 17, 2024 order, this Court also warned plaintiff that failure to comply with the order  
4 would result in a recommendation of dismissal of this action. (Id.) Thirty days passed from  
5 December 17, 2024, and plaintiff did not pay the filing fee or file an application to proceed in  
6 forma pauperis.

7 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court is  
8 directed to assign a district judge to this case; and

9 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

10 These findings and recommendations are submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
12 after being served with these findings and recommendations, plaintiff may file written objections  
13 with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that  
15 failure to file objections within the specified time may waive the right to appeal the District  
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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18 Dated: January 27, 2025

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20 CHI SOO KIM  
21 UNITED STATES MAGISTRATE JUDGE

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